



Employers' Guide to Unemployment Hearings

Reference Handbook

Table of Contents

Table of Contents

What is an Unemployment Hearing	2
Hearing Representation	2
Burden of Proof	2
Choosing the Witness.....	3
Subpoenas	3
Written Statements in Lieu of Attendance	3
Appearance at the Hearing In Person	4
Unemployment Hearing Process	4
Presentation at the Hearing.....	5
Providing Documents as Exhibits for an In-Person Hearing	6
Telephone Hearings	6
Continuances/Postponements.....	7
Nonattendance	7
 Issues and Evidence for Unemployment Hearings	 8
Voluntary Quit.....	8
Discharge for Misconduct	9
Under the Influence of Alcohol or Drugs on Company Property	9
Absenteeism or Tardiness	9
Insubordination, Refusal to Follow a Direct Order, Foul Language, Rudeness to Customer, Improper Conduct.....	9
Theft, Unauthorized Removal of Company Property.....	10
Fighting on Company Property	10
Harassment of Employees	10
Shortages or Overages of Company Funds.....	10
Misuse of Company Funds	11
Falsification of Company Records	11
Witnesses for Discharge Issues	11
Refusal of Work	12
Ability to and Availability for Work.....	12
Pay	12
 After the Hearing.....	 13
 Glossary.....	 14

What is an Unemployment Hearing?

What is an Unemployment Hearing?

An unemployment hearing is an informal legal proceeding scheduled to allow all parties the opportunity to present testimony and evidence on issues related to a claimant's unemployment claim. The hearing officer uses the testimony and evidence provided to make a reasonable and unbiased decision on the issues.

The hearings are scheduled de novo, which means that any information previously provided will not be considered. All evidence that you believe is relevant to the issue must be provided at the hearing. This is your last guaranteed opportunity to submit any new evidence or testimony.

Hearing Representation

It is possible that your agreement with TALX provides for hearing representation. If so, you may request that one be assigned to assist you with preparing for hearing, presenting your evidence at hearing, and questioning your witnesses and cross-examining the claimant. The representative will also argue for disqualification.

Burden of Proof

The burden of proof always falls on the party who initiated the separation (moving party). If the issue is a voluntary quit, it will be the claimant's responsibility to prove the quit was for good cause attributable to the employer. However, you must be prepared to rebut the claimant's evidence if the claimant alleges he quit for work-related reasons.

If the issue is a discharge, the burden of proof is on you to show that the claimant's discharge was for reasons which the state should consider to be disqualifying misconduct. Misconduct is generally defined as a "willful or wanton disregard of the employer's legitimate business interests or a deliberate violation of a known company policy." Gross negligence may also fall within the definition of misconduct. The hearing officer is charged with listening to your testimony and examining your evidence and using both to determine if the reason you discharged the claimant should disqualify him from benefits under state law. It will be necessary to prove that the claimant did what you're alleging is disqualifying misconduct.

We recommend that you discuss the issue(s) in depth with your UC eXpress hearings consultant prior to the hearing. Be sure to mention all details, and all of the documentation you have regarding the claimant's separation, no matter how small or insignificant they may appear. There are times when one small detail can change the whole approach to the issue.

What is an Unemployment Hearing?

Choosing the Witnesses

You should present witnesses for the hearing who have personal involvement in or knowledge of the circumstances surrounding the separation from employment. Witnesses who saw or heard what happened are providing “first-hand testimony.” First-hand testimony outweighs all other testimony. Witnesses, who testify about matters they did not personally observe at the time of occurrence but learned about later, are offering “hearsay testimony.” Hearsay testimony is not always permissible in the hearing. If it is allowed, hearsay (or secondhand) testimony may be considered in the absence of first-hand testimony, but it is insufficient to overcome a denial by the claimant. Likewise, written statements, even when notarized, are considered hearsay and do not carry the weight of firsthand testimony. If you determine you need a witness to testify, notify him of the date, time and location of the hearing and arrange for him to be present.

Subpoenas

If you are concerned that a witness is refusing to testify, you may request that the hearing officer issue a subpoena. Issuance of the subpoena is at the discretion of the hearing officer, so your request should include a detailed statement indicating what you believe the individual will testify to, and why it’s important to the case. You should also include a statement indicating that you attempted to secure the witness for the hearing, but the witness refused to testify. The request must usually be made in writing and should also include the witness' name and address. When determining whether to request a subpoena, you should consider whether the witness's level of cooperation and demeanor during the hearing will help or hinder your case. You may also subpoena documents from the claimant. In your request for a subpoena of documents, include a description of the records, what you believe the records will prove, and include the name of the custodian of the records.

Written Statements in Lieu of Attendance

Written statements in lieu of attendance at the hearing are not recommended as a remedy for nonattendance of a witness. Signed documents in lieu of testimony are hearsay evidence and, in most cases, will not be accepted. In addition, if no witnesses appear for the appellant in a case, the judge will likely consider a default and dismiss the case.

Review your hearing notice carefully to determine if the hearing is scheduled to be held via conference call or in person and plan accordingly.

What is an Unemployment Hearing?

Appearance at a Hearing in Person

Arrive at the hearing location early and report to the receptionist in the hearing office. Take a copy of the notice of hearing with you, and don't forget your identification. If the appellant fails to appear on time, the hearing officer may dismiss the appeal. In some instances, a grace period will be allowed for the participants to arrive; however, the hearing officer is not generally required to do this. If you have a last-minute emergency or delay en route to the hearing, contact the Appeals Office immediately.

Unemployment Hearing Process

The hearing officer begins the hearing by explaining why the hearing is being held. He will explain the legal issues to be considered and the procedures to be followed. He explains the order in which individuals will testify and the rights of cross-examination and rebuttal. Witnesses are "sworn in" prior to testimony.

The party who initiated the claimant's separation will usually present its case first. In a case in which the claimant was discharged, the hearing officer will probably begin with the employer's testimony. If the claimant voluntarily quit, testimony will probably begin with the claimant.

The testimony given during the hearing is tape-recorded in case of further appeal. The hearing officer asks the witnesses specific questions regarding the claimant's employment and separation. Each side is given ample time to give testimony and present documentation. Witnesses should answer to the best of their knowledge with precise statements.

After he is finished with his questioning, he will allow the witness to add anything additional which has not already been presented. Do not interrupt while others are speaking. Instead, make notes so you may offer rebuttal later. You will be given the opportunity to speak again after the claimant is finished testifying.

If you are presenting more than one witness, it is possible that your witnesses will be "sequestered" – meaning they will have to leave the room while another witness is testifying so that they cannot hear or be influenced by the other testimony.

Each party may cross-examine the other party's witnesses. The hearing officer notifies each side when to ask questions. Only the individual designated as the representative is allowed to cross-examine. Refrain from asking questions that have already been asked. Use leading questions, constructing them so that they require a "yes" or "no" answer. You can do this by turning statements into questions, such as: "Isn't it true," "Isn't it a fact" or "Wouldn't you agree." If the witness does not answer the question asked and rambles off the subject, remind him of the question you asked and request a "yes" or "no" answer.

Do not give a hostile witness any openings to provide lengthy explanations. If the witness has contradicted himself, point it out to damage his credibility.

In most cases, each side may offer a closing statement after all the facts and information have been given. Simply recap your main points of argument; do not rehash the entire case. If you choose not to offer a closing statement, let the hearing officer know you would like to stand on the record.

What is an Unemployment Hearing?

The hearing officer then concludes the hearing and states that all testimony and evidence will be considered. All interested parties are notified of the decision by mail.

Presentation at the Hearing

A witness's presentation, demeanor, and responses to questions will have an influence on the hearing officer's decision regarding a case. Following are some keys to effective testimony at an unemployment hearing:

- **Think about each question before answering.** This allows you the opportunity to formulate a response that will have a positive effect on the case.
- **Ask for clarification if you do not fully understand a question.** Asking that the question be restated or clarified better enables you to respond appropriately.
- **Answer only the question you've actually been asked.** This will prevent you from appearing evasive. If there is something additional you would like to say, you will be given the opportunity to offer it after the hearing officer is finished asking you questions.
- **Keep answers simple.** This will reduce the risk of volunteering information that may be harmful to your case.
- **Tell the truth.** You are under oath and your testimony should reflect, as accurately as possible, what you know, saw, heard or did.
- **Do not guess at answers.** If you do not know the answer to a question, say so. If you do not have exact information, use phrases such as "approximately" or "in my estimation." Indicating that your answer is an approximation allows you to clarify, rather than make a conflicting statement and lose credibility if your statement is challenged.
- **Do not use extreme statements.** Such terms as "never" and "always" may cause you to lose credibility if the claimant can demonstrate exceptions to your statement.
- **Answer questions with facts, not conclusions.** For example, instead of stating, "The claimant knew the company policy," state something like, "The claimant was aware of the company policy through the company handbook, which he received at the time of hire. We have an acknowledgment of receipt signed by the employee."
- **Give the hearing officer the facts you used to come to the conclusion that the claimant did what you are alleging.** "The claimant was discharged for misconduct" is the conclusion the hearing officer needs to make. "The claimant was discharged for stealing \$50 from the till" is a statement of fact that the hearing officer can use to find misconduct.

What is an Unemployment Hearing?

- **Make a positive impression through your appearance, demeanor and body language.** Dress neatly, wearing clothes appropriate to an office setting. Use proper manners, state your point and always keep your cool. A calm, well-spoken, polite witness will make a more positive impression than a forceful, intimidating, rude witness. Never interrupt the hearing officer or claimant unless you cannot hear what's being said, even if you do not agree with what is being said. Instead, take notes and refer to a point at a later time, when it is appropriate for you to do so. Finally, portray an image of confidence to the hearing officer by using frequent eye contact.
- **Prepare for your testimony prior to hearing.** Make sure to review the file prior to hearing so that you can answer the hearing officer's questions promptly and confidently. It might help for each witness to make a timeline of the incidents to which he will be testifying. This will allow the witness to refresh his memory.

Providing Documents as Exhibits for a Hearing In-Person

When deciding the case, the hearing officer considers the relevant documents presented by each party at the hearing. You need to take the original and two copies of all documents you wish to present as evidence, such as medical statements, warnings, company policies, time records, etc. In addition, for every record you intend to introduce as evidence, you should have an individual present who can testify regarding how the records were prepared and vouch for their authenticity. If either party feels a document submitted by the opposing party is irrelevant or altered in any way, they may object to its entry as evidence. Be prepared to offer an explanation for your objection. If you want a document admitted into evidence, you must ask the hearing officer to do so. If you do not, he is not required to place the document into the hearing record.

Telephone Hearings

The proceedings for the telephone hearing are the same as the in-person hearing, with one exception. The documentary evidence must be sent to the hearing officer and the claimant prior to the hearing date. Likewise, the claimant must send you a copy of any documents he wants considered as evidence. Any documents you provide to the claimant should be sent by regular mail at least a week prior to hearing. If this is not possible, they should be sent by registered mail or by overnight courier. If all interested parties do not receive copies of documents, they may be excluded from evidence. If a document for which you have not received a copy is introduced as evidence, you may object to its admission as an exhibit. Even if no objection is made, the judge may still decide to exclude the document as a matter of procedure.

In addition to forwarding documentation to the state and claimant, you should make the following preparations for a telephone hearing:

- Make sure that the telephone numbers have been submitted to the state as required by the state's policies and procedures. If the hearing is scheduled via a conference line, ensure that all of your witnesses have the telephone number and conference number. Notify your switchboard that the call from the state should be put through immediately.
- If any of your witnesses will be participating from different phone numbers, notify the hearing officer of their correct numbers. Ensure that all of your witnesses have a copy of the hearing notice and all documentation you are planning to offer into evidence.

What is an Unemployment Hearing?

- Ensure the phone you will be using is in a quiet area where you can avoid interruptions.
- Have a calendar available to testify to specific dates. When referring to a date, always use the month, day, and year.
- If several people are participating from one location, attempt to have everyone in the same room with a speaker phone, though be prepared in case the hearing officer sequesters the witnesses.
- Do not speak to each other or attempt to help another witness answer a question. If you need to communicate with each other, make sure to use a “mute” button or write notes to each other, but do not give another witness the answer. If the witness cannot answer the question, he should say so.
- Be available, even if the hearing officer does not call at the exact time given on the hearing notice. If you have not received a call within 10 minutes of the scheduled hearing time, call the hearing office to find out the status of the hearing.

Continuances/Postponements

At any time during the hearing, if the claimant is giving an explanation you haven't heard before, and you will need additional witnesses or documentation, you should request the hearing be adjourned and continued at a later date. Do not hesitate to make this request. Even if denied, the request will become part of the record and may lay the groundwork for requesting a reopening at a later date.

Postponements need to be requested prior to hearing. They may be granted in extreme circumstances only. Granting of a postponement is at the hearing officer's discretion. Pressing business engagements and vacations are not considered good cause for postponement.

Nonattendance

Reopening of a case for nonattendance can only be granted if good cause is shown for failure to appear. To reinforce the request for reopening, it is advisable to include a statement defining the information your witness has to offer and why it is pertinent to the case. There are no guarantees the state agency will grant the reopening.

Table of Contents

Issues and Evidence for Unemployment Hearing

The first questions asked by the hearing officer will relate generally to the claimant's employment with you. The first witness to testify should be prepared to answer these questions:

Employment History

- First day worked and last day worked
- Position or job title at the time of separation
- Whether the claimant was full-time or part-time, and the general hours worked.
- The name of the claimant's immediate supervisor
- Rate of pay at the time of separation and prior rate of pay if there has been a recent change in rate

This is a general list of evidence needed for unemployment hearings. Depending on the issues, other records may be necessary to properly present your case. The following pages outline the various types of issues addressed in unemployment hearings, with suggestions for providing evidence and testimony.

Voluntary Quit

Evidence

- Signed resignation, or testimony regarding an oral resignation
- Medical records (if the quit is due to illness or the individual's physical condition)
- Documentation of pay given to the claimant in lieu of working a notice period
- Grievance/complaint procedure
- Exit interview form or notes
- Changes made to the claimant's position, hours, or salary made prior to the claimant's quit
- Testimony regarding why any changes were made to the claimant's position
- Testimony regarding attempts made by the claimant to notify you of any issues or problems prior to quitting
- If none, testimony regarding the options available to the claimant to avoid having to leave the job
- Testimony that continuing work was available to the claimant

Witnesses

- Human Resource director or the person who maintains the records
- Claimant's immediate supervisor
- Possibly the claimant's coworkers or other supervisors (depending upon the stated reason for resigning)
- Anyone to whom the claimant reports his reason for leaving
- The person or persons who made any changes to the claimant's position

Issues and Evidence for Unemployment Hearing

Discharge for Misconduct

Evidence

The witnesses should be prepared to testify to the final incident that caused the claimant's separation, and any previous warnings given to the claimant for similar offenses. Evidence should be presented to prove the claimant had reasonable knowledge that the final incident could result in the termination of his employment.

Following are some common offenses constituting misconduct and the records needed to support your case:

Under the Influence of Alcohol or Drugs or Use of Drugs or Alcohol on Company Property

- Drug or alcohol test results
- Chain of custody records and an explanation of such
- Testimony from a Medical Review Officer (the drug testing records may be considered hearsay without it)
- Company handbook and/or policy
- Acknowledgment of receipt of the policy
- Explanation of rehabilitation programs available to employees and the manner in which employees are made aware of this program
- Signed agreement to take random drug tests
- Records of verbal and written warnings if applicable

Absenteeism or Tardiness

- Attendance records
- Call-in sheets
- Time sheets
- Schedule
- Medical statements or doctor's excuses
- Company handbook and/or policy
- Acknowledgment of receipt of the policy
- Explanation of a progressive policy, if applicable
- Records of verbal and written warnings
- Any assistance offered the claimant such as schedule changes
- Opportunities to submit proof of inability to be at work to excuse an absence under the policy

Insubordination, Refusal to Follow a Direct Order, Foul Language, Rudeness to a Customer, Improper Conduct

- Witnesses who saw or heard the act of insubordination or inappropriate conduct
- Statements from customers or witnesses (if they cannot or will not attend the hearing (hearsay testimony))
- Company handbook and/or policy

Issues and Evidence for Unemployment Hearing

- Acknowledgment of receipt of the policy
- Records of verbal and written warnings

Theft, Unauthorized Removal of Company Property

- Admission by the claimant
- First-hand testimony
- Videotape if available – Contact the hearing office prior to hearing to determine if the hearing officer can view tape or DVDs. If not, it may be necessary to request an in-person hearing and bring your own equipment. (Testimony regarding what a witness saw or heard on tape after the time of the incident is hearsay if the tape is not provided for hearing.)
- Complete description of items and their value
- Police reports or loss prevention documents
- Company handbook and/or policy
- Acknowledgment of receipt of the policy

Fighting on Company Property

- First-hand testimony
- Statements from witnesses (only if they cannot attend the hearing (hearsay testimony))
- Admissions by the claimant
- Medical records of injuries
- Police reports
- Company handbook and/or policy
- Acknowledgment of receipt of the policy
- Records of verbal and written warnings

Harassment of Employees

- First-hand testimony
- Statements from witnesses (only if they cannot attend the hearing (hearsay testimony))
- Admissions by the claimant
- Company handbook and/or policy
- Acknowledgment of receipt of the policy
- Records of verbal and written warnings

Shortages or Overages of Company Funds

- First-hand testimony
- Merchandise receipts
- Cash register tapes
- Company handbook and/or policy
- Acknowledgment of receipt of the policy
- Records of verbal and written warnings

Issues and Evidence for Unemployment Hearing

Misuse of Company Funds

- Signed or written admissions
- Videotape if available - Contact the hearing office prior to hearing to determine if the hearing officer can view tape or DVDs. If not, it may be necessary to request an in-person hearing and bring your own equipment. (Testimony regarding what a witness saw or heard on tape after the time of the incident is hearsay if the tape is not provided for hearing.)
- Merchandise receipts, cash register tapes
- Company handbook and/or policy
- Acknowledgment of receipt of the policy
- Records of verbal and written warnings
- Expense reports, reimbursement ledgers, etc.
- Destruction of Company Property
- Pictures of property damage
- Records of repair estimates
- Police reports
- Admissions by the claimant
- Signed witness statements (hearsay)
- Company handbook and/or policy
- Acknowledgment of receipt of the policy
- Records of verbal and written warnings

Falsification of Company Records

- Records which were falsified
- Proof of falsification
- Admissions by the claimant
- Company handbook and/or policy
- Acknowledgment of receipt of the policy
- Records of verbal and written warnings

Witnesses for Discharge Issues

Remember! A firsthand witness is the person(s) who actually saw or was involved in the final incident leading to the separation; this is not necessarily the person who discharged the employee.

- Human resource director or the person who keeps such records and can explain the company policy and the claimant's knowledge of the policy
- Claimant's immediate supervisor or a member of management who discharged the claimant
- Members of management who were involved in the progressive disciplinary action with the claimant
- Claimant's co-worker or any other individual who witnessed the incident resulting in the claimant's dismissal
- Medical technician or a qualified person who can explain test results, accuracy of rates and chain of custody in the lab work for drug and alcohol tests

Issues and Evidence for Unemployment Hearing

- Loss prevention personnel who conducted the investigation or witnessed the claimant's confession in the incident (i.e., theft, destruction of company property, shortages, etc.)

Refusal of Work

A refusal of work must be a direct refusal by a claimant to a definite offer of work. The claimant's failure to respond to a message left for him, or to a letter, will not be sufficient to constitute a refusal of an offer of work.

Records

- Previous work history (duties, hours of work, rates of pay)
- Description of the job offered (duties, hours of work, rate of pay, length of the assignment and way in which the offer was made)
- Records of reason for refusal

Witnesses

- Individual who made the job offer to the claimant
- Individual to whom the claimant told he would not accept the job offer (if different from the individual who offered the job)

Ability to or Availability for work

Records

- Medical records or doctor's statements
- Leave of absence documents
- Application indicating limitations
- If a temporary service employer, the policy stating the employee must contact the employer for a new assignment
- Company handbook and/or policy
- Acknowledgment of receipt of the policy

Witnesses

- Individual to whom the claimant advised he was limiting his availability
- Individual who is able to testify regarding records and policies

Pay

Records

- Pay stubs showing pension payments, vacation pay, severance pay, worker's compensation, etc.
- Company handbook and/or policy
- Acknowledgment of receipt of the policy
- Medical records if the issue is worker's compensation

After the Hearing

Witnesses

- Individual who can testify regarding the pay records and policy

After the Hearing

After the hearing, you should receive a hearing decision. The decision outlines the facts obtained at the hearing, the applicable laws or regulations on which the hearing officer based his decision, and his conclusion either to uphold or reverse the initial determination on the claim.

If the decision is unfavorable, you may appeal it to the state's Board of Review or Appeals Commission if one is in place. At this level, no new facts may be presented and no new hearing will be scheduled. The Board or Commission decides whether the facts found by the hearing officer support a finding of misconduct under state law. You may question the hearing officer's conclusion based on the facts as found by the hearing officer and the application of state regulations. The appeal should state, in detail, why you believe standard procedures were not followed or certain facts were not considered.

Most states require you to submit a written argument with your appeal; however, a few states may allow you to present your argument in person. In response to both written and oral arguments, the state will determine whether to affirm the hearing officer's decision or remand the case to a lower appeal level.

We do not recommend appealing a hearing decision if the hearing officer finds that the claimant is not disqualified for any of these reasons:

- First-hand testimony was not presented at the hearing
- The claimant's behavior was not willful or deliberate
- The final incident was outside of the claimant's control to avoid
- The final incident was an isolated incident of poor judgment

Appeals beyond the Board of Review must be filed with the state Circuit Court of Appeals. At this level, the appellant is filing a lawsuit against the state. An appeal at this level is beyond the scope of the agreement between you and TALX. Therefore, if you decide to pursue a Circuit Court appeal, you need to do so through your company's attorney or legal department.

Issues and Evidence for Unemployment Hearing

Glossary

Able to Work

Eligibility requirement - a claimant must be physically and mentally capable of working.

Actively Seeking Work

Eligibility requirement - the claimant must report to the local employment office as scheduled, file job applications, go on interviews and report verifiable job contacts to the state.

Adjudication

The deliberation process in which a decision is made by the state agency on whether a claimant is allowed benefits or disqualified from benefits.

Administrative Law Judge

See Hearing Officer.

Affirmed

The Administrative Law Judge or Board of Review agrees with the decision under appeal.

Appeal

The protest of a determination or decision made by the state regarding an unemployment case.

Available for Work

Eligibility requirement - the claimant must be accessible for job interviews and willing to accept suitable job offers.

Claimant

The individual who filed the claim for unemployment benefits.

Continuance

The act in which a hearing is temporarily halted and resumed at a later date at the point at which it had left off.

Decision

The hearing officer's judgment regarding a claimant's eligibility for unemployment benefits based on the information provided at a hearing.

De Novo

The case is adjudicated from the beginning, as though no prior determination or decision had been made. All evidence must be provided at the new proceeding.

Discharge

A termination of employment in which the employer is the moving party.

Disqualification

Glossary

A judgment by the state in which the claimant is disallowed unemployment benefits for a specified period.

Good Cause

In a voluntary quit case, a compelling reason for quitting that can be attributed to the employer.

Hearing

The first level in the unemployment appeal process. The employer and claimant appear before a state hearing officer to present testimony and evidence regarding the unemployment issues.

Hearing Officer/Administrative Law Judge/Referee

The state official who oversees and makes the decision regarding an unemployment hearing.

Interested Party

The individuals or entities involved in the unemployment appeal process (generally only the claimant, the employer and the state).

Issue

The topic of discussion in the adjudication process.

Misconduct

A willful and deliberate act displaying a deliberate or culpably negligent disregard of the employer's interest or culpable negligence that could jeopardize the safety or property of the employer or the claimant's coworkers.

Noncharge

A decision in which the employer is exempted from charges for benefits paid to a former employee.

Postponement

The hearing date is delayed before the hearing begins at the request of one of the parties involved.

Referee

See Hearing Officer.

Refusal of Suitable Work

The act in which a claimant turns down an offer of work with similar conditions to his prior job, or similar jobs in the area, and for which he is qualified through training and experience.

Relief of Charges

See Noncharge

Remand

A decision that an unemployment case be sent back to a lower level in the appeal process (such as from the Board of Review back to a hearing officer).

Reopen

An act in which the state allows a case to be reviewed because relevant facts were not considered in the determination.

Glossary

Separation

Severance of the employee-employer relationship.

Voluntary Quit

A separation from employment in which the employee is the moving party.

Nothing in this hearings guide should be considered legal advice. This information has been prepared by UC eXpress. We hope it will aid you in understanding, preparing for and presenting your case at the unemployment hearing. UC eXpress is staffed to assist you in preparing for each hearing, therefore, we encourage you to use this service for all your hearings and any related problems.